

(d) That nothing in this part prevents a determination that information previously determined to be DoD UCNI is classified information under applicable standards of classification.

#### § 223.5 Responsibilities.

(a) The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence shall:

(1) Administer the DoD program for controlling DoD UCNI.

(2) Coordinate DoD compliance with the DoE program for controlling DoE UCNI.

(3) Prepare and maintain the reports required by 10 U.S.C. 128.

(b) The Assistant Secretary of Defense (Public Affairs) shall provide guidance to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)), other elements of the OSD, and the Heads of the DoD Components on the FOIA (5 U.S.C. 552), as implemented in DoD 5400.7-R,<sup>4</sup> as it applies to the DoD UCNI Program.

(c) The Heads of the DoD Components shall:

(1) Implement this part in their DoD Components.

(2) Advise the ASD(C3I) of the following, when information not in the guidelines in appendix B to this part is determined to be DoD UCNI:

(i) Identification of the type of information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

(ii) Justification for identifying the type of information as DoD UCNI, based on the guidelines in appendix B to this part and prudent application of the adverse effects test.

#### § 223.6 Procedures.

Appendix A to this part outlines the procedures for controlling DoD UCNI. Appendix B to this part provides general and topical guidelines for identifying information that may qualify for protection as DoD UCNI. The procedures and guidelines in appendices A and B to this part complement the DoD Component Programs to protect other DoD-sensitive unclassified information and may be used with them.

<sup>4</sup>See footnote 3 to section 223.2(c).

#### § 223.7 Information requirements.

(a) Section 128 of 10 U.S.C. requires that the Secretary of Defense prepare on a quarterly basis a report to be made available on the request of any interested person. Appendix A to this part outlines the procedures for preparing the quarterly report.

(b) The report is exempt from licensing in accordance with paragraph E.4.e of DoD 7750.5-M.<sup>5</sup>

#### APPENDIX A TO PART 223—PROCEDURES FOR IDENTIFYING AND CONTROLLING DoD UCNI

##### A. General

1. The Secretary of Defense's authority for prohibiting the unauthorized disclosure and dissemination of DoD UCNI may be exercised by the Heads of the DoD Components and by the officials to whom such authority is specifically delegated by the Heads of the DoD Components. These procedures for identifying and controlling DoD UCNI are provided as guidance for the Heads of the DoD Components to implement the Secretary of Defense's authority to prohibit the unauthorized dissemination of unclassified information on security measures, including security plans, procedures, and equipment, for the physical protection of DoD SNM, equipment, or facilities.

2. The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, equipment, or facilities.

3. Government information shall be made publicly available to the fullest extent possible by applying the minimum restrictions consistent with the requirements of 10 U.S.C. 128, necessary to protect the health and safety of the public or the common defense and security.

4. DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of an illegal production, theft, diversion, or sabotage if the information proposed for protection were made available for public disclosure and dissemination. The determination to protect specific documents or information is not related to the ability of DoD UCNI to

<sup>5</sup>See footnote 3 to § 223.2(c).